

U S WEST anticipates that applying this provision to manufacturers (i.e., development of a third service list consisting of an even larger and less-defined group than interconnectors) will be an even larger administrative headache. As such, U S WEST recommends that the Commission not require individual notification to manufacturers for short-term notice of changes, but instead require that notice be placed on the Internet five days in advance of the short-term notice filing with the Commission.³² U S WEST submits that providing notice through the Internet gives all interested parties (whether they be manufacturers, interconnectors, or enhanced service providers) equal access to the necessary technical information. Individual paper notification is not only superfluous and subject to unintentional error, but it is also burdensome and wasteful of paper.³³

E. The Commission Should Permit The Use Of Non-Disclosure
Agreements To Safeguard The Proprietary Information Of
Third Parties.

Finally, the Commission expresses some concern with respect to proprietary information. To allay the Commission's fears, U S WEST again suggests adoption of the rules relating to proprietary information implementing Section 251(c)(5). That is, to the extent that BOC proprietary or confidential information must be disclosed to meet the Section 273(c) requirements, the Commission should allow

³² Under U S WEST's proposal, only a certification that the short-term notice had been placed on the Internet and the notice itself would have to be filed with the Commission.

³³ We note that U S WEST recently notified approximately 2000 enhanced service providers and CPE manufacturers of the availability of the Internet to provide Computer II and III network disclosure information electronically. U S WEST has

nondisclosure agreements. In cases where such proprietary information belongs to a third party, the manufacturer must negotiate with the third party directly for disclosure.

V. SECTION 273(e)(1),(2) APPLIES TO A BOC'S PROCUREMENT OF TELECOMMUNICATIONS EQUIPMENT; SECTION 273(e)(4) APPLIES TO SALES OF TELECOMMUNICATIONS EQUIPMENT.

A. The Procurement Standards In Section 273(e) Apply Only To The Procurement Of Telecommunications Equipment By A BOC When It Is Authorized To Engage In Manufacturing Through A Separate Affiliate Or When It Is Entitled To Receive A Royalty In The Equipment Which Is The Subject Of A Procurement.

Section 273(e) governs BOC practices in procuring and selling telecommunications equipment. In the Notice, the Commission asks whether the requirements in Section 273(e) apply to all BOC or only to BOCs that are authorized to manufacture under Section 273(a).³⁴

The Commission observes that Section 273(e) is positioned within that section of the Act which addresses BOC manufacturing rights and obligations.³⁵ In addition, the subject matter of Section 273(e)(1), (2), and (4) focuses on telecommunications equipment.

As U S WEST suggested above, the nondiscrimination standards in Section 273(e)(1) and the procurement standards in Section 273(e)(2) apply in two contexts. They apply to a BOC's procurement of telecommunications equipment: (1) when a

received no complaints regarding this method of disclosure which has been in place since October of 1996.

³⁴ Notice ¶ 63.

³⁵ Id.

BOC is authorized to engage in manufacturing under Section 273(a), and (2) when a BOC enters into a permitted royalty agreement with a manufacturer of telecommunications equipment under Section 273(b)(2)(B), but before a BOC is authorized to engage in full-scale manufacturing under Section 273(a). In these two contexts the Act prohibits a BOC from discriminating in the selection and procurement of telecommunications equipment and software and services integral to the operation of such equipment in favor of parties with whom it has these relationships, and the Act requires a BOC to make these procurement decisions on the basis of an objective assessment of “price, quality, delivery, and other commercial factors.” These provisions are self-explanatory and self-executing.

B. No Additional Rules Are Required To Monitor Sales Of Telecommunications Equipment Sold By A BOC's Manufacturing Affiliate.

After a BOC has been authorized to engage in manufacturing, Section 273(e)(4) prohibits a BOC and its manufacturing affiliate from restricting sales of telecommunications equipment, including software integral to the operation of such equipment, to any LEC. The Commission tentatively concludes that “this language is unambiguous.”³⁶ U S WEST agrees.

C. No Additional Audit Requirements Are Needed.

In connection with the nondiscrimination and procurement standards in Section 273(e)(1) and (2) and sales of telecommunications equipment by a BOC or its manufacturing affiliate, the Commission asks: “(1) whether the Commission

³⁶ Id. ¶ 73.

should require or perform periodic audits of BOC sales; (2) whether the Commission should collect information on procurement practices to enable us to detect anomalous behavior that might trigger an audit or investigation; and (3) whether the Commission should adopt other additional rules to implement this provision of the 1996 Act.”³⁷

When a BOC is finally authorized to engage in manufacturing telecommunications equipment and CPE, the BOC will begin to make sales with no market share. It is somewhat anomalous to assume that the BOC would further handicap itself by restricting sales. Because of the market in which it will find itself, the BOC’s and its manufacturing affiliate’s business incentive will be to make sales, not to restrict sales. The Commission should not put in place mechanisms and rules which will impose on a BOC and its manufacturing affiliate onerous and costly sales audit burdens, particularly at a time when they are attempting to enter the manufacturing market for telecommunications equipment and CPE and to compete against multi-national giants.

Similarly, the Commission should not put in place burdensome audit and reporting requirements with regard to BOC procurements of telecommunications equipment. Today BOCs follow formal and documented procurement practices to ensure objectivity and consideration of all relevant commercial factors when selecting telecommunications equipment for purchase. The BOCs’ Request for Information (“RFI”) and Request for Proposal (“RFP”) practices are widely known

³⁷ Id.

and discussed by all interested vendors as soon as an RFI or RFP is issued.

Additional rules for the oversight of the nondiscrimination and procurement standards in the Act are not required.

VI. CONCLUSION

U S WEST's Comments in this proceeding are designed to support the intent of Congress to establish a pro-competitive, de-regulatory national policy framework for the U.S. telecommunications industry. Congress created broad exceptions in Section 273(b) to permit the BOCs to engage in close collaboration with manufacturers for the design and development of telecommunications equipment and CPE, to engage in research, and to enter into royalty arrangements with manufacturers of telecommunications equipment. Congress deliberately avoided creating rigid definitions for these activities which would impose artificial constraints on these activities because it recognized that innovation and invention during design and development are often unpredictable and unexpected. That is the hallmark of technological innovation. The Commission should be guided by the same principles and should avoid adopting rules which constrain innovation.

The requirements in Section 273 are clear, unambiguous, and require little interpretation. U S WEST's Comments are based upon the plain meaning of the words used by Congress to authorize the BOCs to engage in many aspects of manufacturing prior to actual fabrication and upon the plain meaning of the words

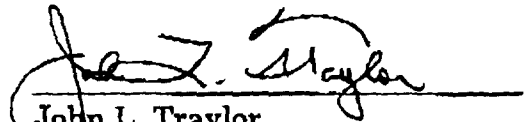
used by Congress to describe obligations and requirements imposed upon the BOCs.

The Commission should follow the same approach in this proceeding.

Respectfully submitted,

U S WEST, INC.

By:

A handwritten signature in dark ink, appearing to read "John L. Traylor", is written over a horizontal line.

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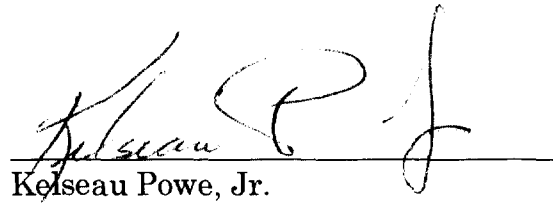
Its Attorneys

Of Counsel,
Dan L. Poole

February 24, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 24th day of February, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.



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